

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL APODACA, et al.,

Plaintiffs,

v.

CIV No. 01-639 LH/LFG

**PUBLIC SERVICE COMPANY
OF NEW MEXICO,**

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on PNM's Motion for Leave to Submit Additional Dispositive Motions and Supporting Memoranda, filed on October 15, 2002 (Docket No 54). The Court, having considered the motion as well as the briefs of the parties, concludes that this motion is not well taken and shall be **denied**.

Discussion

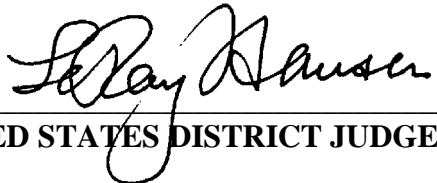
On February 27, 2002, the Public Service Company of New Mexico ("PNM") filed a motion for summary judgment. The dispositive motion deadline in this case was May 15, 2002. On September 13, 2002, the Court filed an opinion that dismissed Plaintiffs' race and sex discrimination claims and found that material issues of fact precluded dismissal of Plaintiffs' ERISA and ADEA claims (Docket No. 52). This Court's Memorandum Opinion and Order states at page 5: "Plaintiffs

Engert, Fleming, Willden and Sandoval, who had been laid off, either did not accept re-employment or were not informed of the Settlement Agreement and its terms.” This sentence reflects the lack of proof in the record on this point. Based on the proof then before it, the Court was unable to conclude that these Plaintiffs had rejected offers of re-employment. PNM now seeks a second chance to show that these four Plaintiffs “declined unconditional offers of re-employment, and also have received full back pay and benefits”. (PNM Reply Brief at page 2).

It would be unfair to afford PNM another opportunity to present proof on this issue, given that the dispositive motion deadline is well past, in light of the fact that proof on this topic was available to PNM at the time that it filed its motion for summary judgment in February 2002. For this reason, PNM’s motion shall be denied.

WHEREFORE, PNM’s Motion for Leave to Submit Additional Dispositive Motions and Supporting Memoranda, filed on October 15, 2002 (Docket No 54) is **denied**.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE